

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT CLARK, an individual,	)	Case No. 07cv287-BEN (BLM)
	)	
Plaintiff,	)	<b>CASE MANAGEMENT CONFERENCE</b>
v.	)	<b>ORDER REGULATING DISCOVERY AND</b>
	)	<b>OTHER PRETRIAL PROCEEDINGS</b>
QUALITY HOME LOANS, a	)	
California corporation, a/k/a	)	(Fed. R. Civ. P. 16)
QHL HOLDINGS, FUND TEN, LLC, a	)	(Local Rule 16.1)
California limited liability	)	(Fed. R. Civ. P. 26)
company; SENIOR AMERICAN	)	
FUNDING, INC., a/k/a FIRST	)	
CALIFORNIA FUNDING GROUP, INC.,	)	
a California corporation;	)	
CERTIFIED ESCROW, INC., a	)	
California corporation; BRIAN	)	
W. WHITE, an individual;	)	
RADONDO C. COLBERT, an	)	
individual; MATTHEW DAVID	)	
COPLEY, an individual;	)	
PRINCIPAL LIFE INSURANCE	)	
COMPANY, a corporation,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, a telephonic Case Management Conference was held on July 5, 2007 at 2:00 p.m. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing,

1           **IT IS HEREBY ORDERED:**

2           1. On or before July 13, 2007, the parties shall submit a  
3 proposed protective order for the Court's review. The proposed  
4 protective order shall include the following language:

5           a. "Subject to public policy and further Court Order,  
6 nothing shall be filed under seal, and the Court shall not be required  
7 to take any further action with regard to material a party has  
8 designated as 'Confidential' without separate prior Court Order made  
9 after application by either party"; and

10           b. "This Order is made without prejudice to either party  
11 seeking a further Order concerning any document or information felt to  
12 be entitled to a greater degree of protection."

13           2. Any motion to join other parties, to amend the pleadings, or  
14 to file additional pleadings shall be filed on or before August 6, 2007.

15           3. Each party shall serve on all opposing parties a list of  
16 experts, whom that party expects to call at trial, on or before November  
17 16, 2007. Each party may supplement its designation in response to the  
18 other party's designation no later than December 7, 2007. Expert  
19 designations shall include the name, address, and telephone number of  
20 each expert and a reasonable summary of the testimony the expert is  
21 expected to provide. The list shall also include the normal rates the  
22 expert charges for deposition and trial testimony.

23           The parties must identify any person who may be used at trial to  
24 present evidence pursuant to Rules 702, 703 or 705 of the Federal Rules  
25 of Evidence. This requirement is not limited to retained experts.

26           **Please be advised that failure to comply with this section or any**  
27 **other discovery order of the Court may result in the sanctions provided**  
28 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**

1 **of experts or other designated matters in evidence.**

2 4. All expert disclosures required by Fed. R. Civ. P. 26(a)(2)  
3 shall be served on all parties on or before January 11, 2008. Any  
4 contradictory or rebuttal information shall be disclosed on or before  
5 February 1, 2008. In addition, Fed. R. Civ. P. 26(e)(1) imposes a duty  
6 on the parties to supplement the expert disclosures made pursuant to  
7 Fed. R. Civ. P. 26(a)(2)(B) by the time that pretrial disclosures are  
8 due under Fed. R. Civ. P. 26(a)(3) (discussed below).

9 The parties are advised to consult with Fed. R. Civ. P. 26(a)(2)  
10 regarding expert disclosures. Such disclosures shall include an expert  
11 report, all supporting materials, a complete statement of all opinions  
12 to be expressed and the basis and reasons therefore, the data or other  
13 information considered by the expert in forming the opinions, any  
14 exhibits to be used as a summary of or as support for the opinions, the  
15 qualifications of the witness including a list of all publications  
16 authored by the witness within the preceding ten years, the compensation  
17 to be paid for the study and testimony, and a list of other cases in  
18 which the witness has testified as an expert at trial or by deposition  
19 within the preceding four years.

20 This disclosure requirement applies to all persons retained or  
21 specially employed to provide expert testimony or whose duties as an  
22 employee of the party regularly involve the giving of expert testimony.

23 **Please be advised that failure to comply with this section or any**  
24 **other discovery order of the Court may result in the sanctions provided**  
25 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**  
26 **of experts or other designated matters in evidence.**

27 5. All discovery shall be completed on or before March 14, 2008.  
28 "Completed" means that all discovery under Rules 30-36 of the Federal

1 Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be  
2 initiated a sufficient period of time in advance of the cut-off date, so  
3 that it may be completed by the cut-off date, taking into account the  
4 times for service, notice, and response as set forth in the Federal  
5 Rules of Civil Procedure.

6 Counsel shall promptly and in good faith meet and confer with  
7 regard to all discovery disputes in compliance with Civil Local Rules  
8 16.5(k) and 26.1(a). All discovery motions shall be filed within thirty  
9 (30) days after counsel have met and conferred and reached an impasse  
10 with regard to any particular discovery issue, but in no event shall  
11 discovery motions be filed more than sixty (60) days after the date upon  
12 which the event giving rise to the discovery dispute occurred. For oral  
13 discovery, the event giving rise to the discovery dispute is the  
14 completion of the transcript of the affected portion of the deposition.  
15 For written discovery, the event giving rise to the discovery dispute is  
16 either the service of the response, or, if no response was served, the  
17 initial date the response was due. In addition, all discovery motions  
18 must be filed within thirty (30) days after the close of discovery.

19 6. All other pretrial motions must be filed on or before April  
20 18, 2008. Motions will not be heard or calendared unless counsel for  
21 the moving party has obtained a motion hearing date from the law clerk  
22 of the judge who will hear the motion. Failure to timely request a  
23 motion date may result in the motion not being heard. Motions will not  
24 be heard unless you have obtained a date from the judge's law clerk.

25 Questions regarding this case should be directed to the judge's law  
26 clerk. The Court draws the parties' attention to Local Rule 7.1(e)(4)  
27 which requires that the parties allot additional time for service of  
28 motion papers by mail. Papers not complying with this rule shall not be

1 accepted for filing.

2 Briefs or memoranda in support of or in opposition to any pending  
3 motion shall not exceed twenty-five (25) pages in length without leave  
4 of the judge who will hear the motion. No reply memorandum shall exceed  
5 ten (10) pages without leave of the judge who will hear the motion.

6 Pursuant to Local Rule 7.1(f)(1), when filing a Motion for Summary  
7 Judgment and/or Adjudication, Defendants shall file, and serve on  
8 Plaintiff, a separate statement setting forth plainly and concisely all  
9 material facts which they contend are undisputed. Each of the material  
10 facts stated shall be followed by a reference to the supporting  
11 evidence. Further, Plaintiff shall file, and serve on Defendants, a  
12 separate statement that responds to each of the material facts contended  
13 by Defendants to be undisputed, indicating whether the opposing party  
14 agrees or disagrees that those facts are undisputed. The statement also  
15 shall set forth plainly and concisely any other material facts that the  
16 opposing party contends are disputed. Each material fact contended by  
17 the opposing party to be disputed shall be followed by a reference to  
18 the supporting evidence.

19 7. A Mandatory Settlement Conference shall be conducted on  
20 December 3, 2007 at 9:30 a.m. in the chambers of Magistrate Judge  
21 Barbara L. Major located at 940 Front Street, Suite 5140, San Diego, CA  
22 92101. All discussions at the Mandatory Settlement Conference will be  
23 informal, off the record, privileged, and confidential. Counsel for any  
24 non-English speaking party is responsible for arranging for the  
25 appearance of an interpreter at the conference.

26 a. Personal Appearance of Parties Required: All parties,  
27 adjusters for insured defendants, and other representatives of a party  
28 having full and complete authority to enter into a binding settlement,

as well as the principal attorneys responsible for the litigation, must be present in person and legally and factually prepared to discuss settlement of the case. Counsel appearing without their clients (whether or not counsel has been given settlement authority) will be cause for immediate imposition of sanctions and may also result in the immediate termination of the conference.

Unless there are extraordinary circumstances, persons required to attend the conference pursuant to this Order shall not be excused from personal attendance. **Requests for excuse from attendance for extraordinary circumstances shall be made in writing at least three (3) court days prior to the conference.** Failure to appear in person at the Mandatory Settlement Conference will be grounds for sanctions.

b. **Full Settlement Authority Required:** In addition to counsel who will try the case, a party or party representative with full settlement authority<sup>1</sup> must be present for the conference. In the case of a corporate entity, an authorized representative of the corporation who is not retained outside counsel must be present and must have discretionary authority to commit the company to pay an amount up to the amount of the Plaintiff's prayer (excluding punitive damages prayers). The purpose of this requirement is to have representatives present who

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<sup>1</sup> "Full settlement authority" means that the individuals at the settlement conference must be authorized to explore settlement options fully and to agree at that time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference contemplates that the person's view of the case may be altered during the face to face conference. Id. at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 can settle the case during the course of the conference without  
2 consulting a superior. Counsel for a government entity may be excused  
3 from this requirement so long as the government attorney who attends the  
4 Mandatory Settlement Conference (1) has primary responsibility for  
5 handling the case, and (2) may negotiate settlement offers which the  
6 attorney is willing to recommend to the government official having  
7 ultimate settlement authority.

8 c. Confidential Settlement Statements Required: No later  
9 than November 26, 2007, the parties shall submit directly to Magistrate  
10 Judge Major's chambers confidential settlement statements no more than  
11 five (5) pages in length. These confidential statements shall not be  
12 filed or served on opposing counsel. Each party's confidential  
13 statement must include the following:

14 (i) A brief description of the case, the claims and/or  
15 counterclaims asserted, and the applicable defenses or position  
16 regarding the asserted claims;

17 (ii) A specific and current demand or offer for  
18 settlement addressing all relief or remedies sought. If a specific  
19 demand or offer for settlement cannot be made at the time the brief is  
20 submitted, then the reasons therefore must be stated along with a  
21 statement as to when the party will be in a position to state a demand  
22 or make an offer; and

23 (iii) A brief description of any previous settlement  
24 negotiations, mediation sessions, or mediation efforts.

25 General statements that a party will "negotiate in good faith" is  
26 not a specific demand or offer contemplated by this Order. It is  
27 assumed that all parties will negotiate in good faith.

28 d. Requests to Continue a Mandatory Settlement Conference:

1 Any request to continue the Mandatory Settlement Conference or request  
2 for relief from any of the provisions or requirements of this Order must  
3 be sought by a written ex parte application. The application must (1)  
4 be supported by a declaration of counsel setting forth the reasons and  
5 justifications for the relief requested, (2) confirm compliance with  
6 Civil Local Rule 26.1, and (3) report the position of opposing counsel  
7 or any unrepresented parties subject to the Order. **Absent extraordinary**  
8 **circumstances, requests for continuances will not be considered unless**  
9 **submitted in writing no less than seven (7) days prior to the scheduled**  
10 **conference.**

11 **If the case is settled in its entirety before the scheduled date of**  
12 **the conference, counsel and any unrepresented parties must still appear**  
13 **in person, unless a written joint motion confirming the complete**  
14 **settlement of the case is submitted no less than twenty-four (24) hours**  
15 **before the scheduled conference.**

16 8. The parties must comply with the pretrial disclosure  
17 requirements of Fed. R. Civ. P. 26(a)(3) no later than **July 28, 2008**.  
18 The parties should consult Fed. R. Civ. P. 26(a)(3) for the substance of  
19 the required disclosures.

20 Please be advised that failure to comply with this section or any  
21 other discovery order of the Court may result in the sanctions provided  
22 for in Fed. R. Civ. P. 37, including a prohibition on the introduction  
23 of designated matters in evidence.

24 9. Counsel shall serve on each other and lodge directly with  
25 Judge Benitez's chambers their Memoranda of Contentions of Fact and Law  
26 in compliance with Local Rule 16.1(f)(2) on or before **July 28, 2008**.

27 10. Counsel shall confer and take the action required by Local  
28 Rule 16.1(f)(4) on or before **August 4, 2008**. At this meeting, counsel



1 shall discuss and attempt to enter into stipulations and agreements  
2 resulting in simplification of the triable issues. Counsel shall  
3 exchange copies and/or display all exhibits other than those to be used  
4 for impeachment, lists of witnesses and their addresses including  
5 experts who will be called to testify, and written contentions of  
6 applicable facts and law. The exhibits shall be prepared in accordance  
7 with Local Rule 16.1(f)(2)(c). Counsel shall cooperate in the  
8 preparation of the proposed final pretrial conference order.

9 11. The proposed final pretrial conference order, including  
10 written objections, if any, to any party's Fed. R. Civ. P. 26(a)(3)  
11 pretrial disclosures, shall be prepared, served, and submitted to the  
12 Clerk's Office on or before August 11, 2008 and shall be in the form  
13 prescribed in and in compliance with Local Rule 16.1(f)(6). **In**  
14 **addition, the parties shall include in the proposed pretrial order a**  
15 **statement to be read to the jury, not in excess of one page, of the**  
16 **nature of the case and the claims and defenses.** Any objections to  
17 pretrial disclosures shall comply with the requirements of Fed. R. Civ.  
18 P. 26(a)(3). **Please be advised that the failure to file written**  
19 **objections to a party's pretrial disclosures may result in the waiver of**  
20 **such objections, with the exception of those made pursuant to Rules 402**  
21 **(relevance) and 403 (prejudice, confusion or waste of time) of the**  
22 **Federal Rules of Evidence.**

23 12. The final pretrial conference is scheduled on the calendar of  
24 the Honorable Roger T. Benitez on August 18, 2008 at 10:30 a.m.. The  
25 trial date will be assigned by Judge Benitez at the pretrial conference.

26 13. The dates and times set forth herein will not be modified  
27 except for good cause shown.

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1           14. Plaintiff's(s') counsel shall serve a copy of this order on  
2 all parties that enter this case hereafter.

3  
4 Dated: July 6, 2007



BARBARA L. MAJOR  
United States Magistrate Judge

5  
6 COPY TO:

7 HONORABLE ROGER T. BENITEZ  
8 UNITED STATES DISTRICT JUDGE

9 ALL COUNSEL  
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